

BOARD OF APPEALS
for
MONTGOMERY COUNTY

Stella B. Werner Council Office Building
100 Maryland Avenue
Rockville, Maryland 20850
(240) 777-6600

Case No. A-5645

PETITION OF JOAN AND KEN LORBER

(Hearing held October 3, 2001)

OPINION OF THE BOARD

(Effective date of Opinion, November 2, 2001)

This proceeding is a petition pursuant to Section 59-A-4.11(b) of the Zoning Ordinance (Chap. 59, Mont. Co. Code 1994, as amended) for variances from Sections 59-C-1.323(a) and 59-1.323(b)(1). The petitioners propose to construct a carport that requires a variance of twelve (12) feet as it is within eighteen (18) feet of the front lot line and a variance of six (6) feet as it is within one (1) foot of the side lot line. The required front lot setback is thirty (30) feet and the required side lot line setback is seven (7) feet.

The subject property is Lot 1, Block B, Larchmont Knolls Subdivision, located at 3908 Dannel Lane, Kensington, Maryland, in the R-90 Zone (Tax Account No. 01405863).

Decision of the Board: Requested variances **granted**.

EVIDENCE PRESENTED TO THE BOARD

1. The petitioners propose to construct a 14.67 x 17.67 foot carport in the eastern side yard.
2. The petitioners testified that the prior owners converted the original garage into living space and an area for the mechanical systems of the residence.
3. Paul Davey, the petitioners' architect, testified that the property is a uniquely shaped lot. The lot is widest in the front section, with the angled lot lines of the property moving inward from front to back. Mr. Davey testified that the slate roof of the residence would be extended to the carport.
4. Mr. Davey testified that the carport would provide about three-fourths coverage for a vehicle and would provide space for one car. Mr. Davey further testified that the steep upward slope of the rear yard prevents the siting of a garage in this area and that the carport could not be located elsewhere on the lot.
5. The petitioners testified that the property most impacted by the construction, Lot 2, faces away from the carport and that the existing trees would screen the structure. See, Exhibit 6. The petitioners testified that they have spoken with their neighbors and that their neighbors support the variance request.

FINDINGS OF THE BOARD

Based on the petitioners' binding testimony and the evidence of record, the Board finds that the variances can be granted. The requested variances comply with the applicable standards and requirements set forth in Section 59-G-3.1 as follows:

- (a) By reason of exceptional narrowness, shallowness, shape, topographical conditions, or other extraordinary situations or conditions peculiar to a specific parcel of property, the strict application of these regulations would result in peculiar or unusual practical difficulties to, or exceptional or undue hardship upon, the owner of such property.*

The property is a uniquely shaped lot with angled lot lines that narrow from front to back. The rear yard of the property has a steep upward slope. The Board finds that property's exceptional shape, coupled with the steep upward slope of the rear yard are conditions unique and peculiar to the property and that the strict application of the regulations would result in practical difficulties for and an undue hardship upon the petitioners if the variances were to be denied.

- (b) Such variance is the minimum reasonably necessary to overcome the aforesaid exceptional conditions.*

The Board finds that the requested variances for the construction of a carport are the minimum reasonably necessary to overcome the property's unique conditions.

- (c) Such variance can be granted without substantial impairment to the intent, purpose and integrity of the general plan or any duly adopted and approved area master plan affecting the subject property.*

The proposed construction will continue the residential use of the property and the variances will not impair the intent, purpose, or integrity of the general plan or approved area master plan.

- (d) Such variance will not be detrimental to the use and enjoyment of adjoining or neighboring properties.*

The proposed carport will not face the most impacted neighbor and would be screened by the existing trees. The record contains no testimony or correspondence in opposition to the variance request. The Board finds that the variances will not be detrimental to the use and enjoyment of the adjoining and neighboring properties.

Accordingly, the requested variances of twelve (12) feet from the required thirty (30) foot front lot line setback and of six (6) feet from the required seven (7) foot side lot line setback for the construction of a carport are granted subject to the following conditions:

1. The petitioners shall be bound by all of their testimony and exhibits of record, and the testimony of their witnesses, to the extent that such evidence and representations are identified in the Board's Opinion granting the variance.

2. Construction must be completed according to plans entered in the record as Exhibit Nos. 3 and 4(a) and 4(b).

The Board adopted the following Resolution:

BE IT RESOLVED by the Board of Appeals for Montgomery County, Maryland, that the Opinion stated above is adopted as the Resolution required by law as its decision on the above entitled petition.

On a motion by Louise L. Mayer, seconded by Allison Ishihara Fultz, with Donna L. Barron, Angelo M. Caputo and Donald H. Spence, Jr., Chairman, in agreement, the Board adopted the foregoing Resolution.

Donald H. Spence, Jr.
Chairman, Montgomery County Board of Appeals

I do hereby certify that the foregoing
Opinion was officially entered in the
Opinion Book of the County Board of
Appeals this 2nd day of November, 2001

Katherine Freeman
Executive Secretary to the Board

NOTE:

See Section 59-A-4.53 of the Zoning Ordinance regarding the twelve-month period within which the variance granted by the Board must be exercised.

The Board shall cause a copy of this Opinion to be recorded among the Land Records of Montgomery County.

Any request for rehearing or reconsideration must be filed within fifteen (15) days after the date of the Opinion is mailed and entered in the Opinion Book (see Section 59-A-4.63 of the County Code). Please see the Board's Rules of Procedure for specific instructions for requesting reconsideration.

Any decision by the County Board of Appeals may, within thirty (30) days after the decision is rendered, be appealed by any person aggrieved by the decision of the Board and a party to the proceeding before it, to the Circuit Court for Montgomery County in accordance with the Maryland Rules of Procedure.